

May 1, 2020

Exhibit 1

Members of WPIC

The purpose of this memo is to simplify the conversation about solutions to the ownership update problem.

There are two primary causes of the problem. The first is the use of geocodes. Water users and the water court rarely use geocodes to describe water rights. As a result, geocodes and the places of use for water rights often don't match. This causes problems when geocodes are relied on to determine water ownership. Geocodes can be helpful, but they also cause inaccuracy and confusion. The Department's reliance on geocodes to update ownership and describe places of use is one of the reasons the data base is inaccurate.

The second cause of ownership problems is delay. There are multiple reasons for delay, but the three primary causes are reliance on DOR for transaction information; delays caused by the Department's refusal to update records until it receives a fee; and failure of some field offices to update ownership records in a timely manner.

The following solutions address problems with geocodes and delays.

1. Eliminate 85-2-424(2)(a)(i) and (2)(d). These two changes will decrease department reliance on geocodes as well as its reliance on information from DOR. These changes also help address the problem of the Department adding new owners to water rights based solely on geocodes. The Department would still have the authority to update ownership based on a deed and ownership update form.
2. The legislature should add language to the ownership update statute directing the Department not to delay ownership updates if the Department does not receive its fees. Fees can still be paid, and penalties assessed, but non-payment of fees should not cause delay.
3. The legislature should require the Department to complete ownership updates within a reasonable time, rather than allowing updates to languish for months or years after information needed to process the update is received.



DNRC Response to Water Court Proposal and Request for Additional Information
Prepared for Water Policy Interim Committee
April 29, 2020

The following information is provided to the Geocodes Working Group for the May 1, 2020 meeting. Contained in this document is a response to the Water Court memo circulated on April 24, as well as additional information that was requested at the April 15 Geocode Working Group Meeting (GWGM).

DNRC has provided numerous statistics over the last several months illustrating just how effective the DOR ownership update process is. Not only is ownership in the database more accurate than ever, the updates are more timely as well. It should be clarified, however, that geocodes do not define a place of use. The place of use is defined on a water right and DNRC simply matches geocodes to that place of use. If the place of use identified on the underlying water right is incorrect, the geocodes assigned may also be incorrect. This is an underlying water right issue that needs to be addressed and geocodes will be corrected after the legal land description is corrected. This is addressed in Ms. Evans' outline and will be discussed at a GWGM.

In response to statements and suggestions regarding delays with processing ownership updates:

1. The first suggestion is to remove the DOR process entirely.
 - a. DNRC currently has the means to accept and process ownership updates based upon paper forms or DOR information. To return solely to paper forms removes the second method of initiating ownership update collection. If the information provided is sufficient to process a paper update, the update is processed in a timely fashion. If enough information is not received, DNRC uses information from DOR instead. Statistics provided in November indicate that 37.5% of ownerships are updated after a fee letter is sent (fee letters are rarely sent when 608 forms are submitted). Without this alternative method, ownership on the vast majority of those 37.5% would remain outdated.
 - b. Judge McElyea mentioned the return mail statistics for a decree in basin 43B at the last GWGM. He stated that there was 11% return mail (which includes snowbirds because presorted mail is not forwarded). This is actually an attestation to benefits of the DOR process. During the HB22 mailing completed statewide in 2005, it was estimated that approximately 40% of ownerships/addresses/contacts were incorrect, leading to adoption and implementation of the current DOR process. Ultimately, the DOR process simply provides an additional layer to catch updates and additional supporting documentation which reduces delays and return mail, while increasing the accuracy of ownership records.

Without the DOR process, ownership records will soon revert to a state similar to that seen in 2005 when ownership accuracy was significantly lower than it is today.

2. A suggestion was made that DNRC update ownership without payment of fees. There are several issues behind this suggestion, each of which is addressed below:
 - a. Average annual revenue collected based upon ownership update fees was about \$668,000 in recent years. Without these fees, or some other source of



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revenue, DNRC would not be able to maintain current staffing levels and all processing timelines would increase exponentially.

- b. As described in § 85-2-431, MCA, a penalty may be assessed, up to \$75. Collecting this penalty is simply impractical. It would cost the DNRC hundreds of dollars and many staff hours to collect a single ownership update fee. It is not feasible for DNRC to seek payment of fees through legal proceedings. If updates are processed without fees and DNRC is unable to seek payment through legal means, what incentive do owners have to pay the statutorily required fee?
- c. There have been issues in the past with a few offices not updating water rights in a timely fashion. Great strides have been made in these offices to address backlogs, and while there are some outliers, offices are now much more up to date. Each of these offices is now fully staffed so additional backlogs will be minimized. Paper forms are processed in a timely fashion and the backlog of DOR information (those where paper forms were not filed) is decreasing. DNRC has an internal goal of entering updates within 3 days of receipt and processing the updates occurs within 30 days of receipt of all necessary information. If individuals request quicker updates, DNRC employees strive to update the ownership immediately and provide documentation at that time (however, these requests may cause delays in other areas). This is also an option that has been voiced to, and used by the Water Court, numerous times to assist with keeping case proceedings on track.

At the April 15, 2020 GWGM additional information regarding county deed access was requested. The information follows:

- Counties DNRC can access online deeds through county sites:
 - Flathead, Gallatin, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Missoula, Park, Ravalli, Sanders, Silver Bow, Yellowstone
- Counties DNRC can access limited information through deeds.com
 - Golden Valley, Judith Basin, Meagher, Petroleum, Wheatland
- It is also important to note that additional county records, such as Certificates of Survey, prove to be very helpful while researching places of use and geocoding water rights. At this time, access to this information is more restricted than deed information.

DNRC staff looks forward to continuing to discuss the items Ms. Evans submitted in March at the May 1, 2020 GWGM.